

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

CENTRAL UNITED LIFE INSURANCE COMPANY

Respondent

v.

JOHN M. HUFF

Appellant

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DOCKET NUMBER **WD73168**

DATE: November 1, 2011

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Patricia S. Joyce, Judge

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Appellate Judges:

Division Two: Thomas H. Newton, P.J., Cynthia L. Martin and Gary D. Witt, JJ.

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Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CENTRAL UNITED LIFE INSURANCE COMPANY,  
Respondent, v. JOHN M. HUFF, Appellant

WD73168

Cole County

Before Division Two Judges: Thomas H. Newton, P.J., Cynthia L. Martin and Gary D. Witt, JJ.

Central United Life Insurance Company (“Company”) unilaterally changed its claims administration as it related to reimbursement for “actual charges” for cancer-related medical expenses. Company abandoned its practice of paying the amount the medical provider billed, and began reimbursing claimants for the amount the medical provider received in payment. Claimants complained to the Consumer Division of the Department of Insurance. Subsequently, the Department’s Regulation Division conducted a market examination of Company to determine if its operations were lawful. The Regulation Division issued a report stating that the Company’s new claims administration practice was unlawful as were its marketing practices. Before the report was issued, Company had settled with Missouri policyholders in a class action. Because the results of the class action were not reflected in the report, Company sought modification. After a hearing to determine whether the report should be modified, a hearing officer recommended that John M. Huff, the Director of the Department, accept the report as filed. The Director issued an order accepting the report, finding Company had violated several statutes, and ordering the filing of a civil lawsuit against Company for the violations. Company appealed to the circuit court, which reversed the Director’s order. The Director appeals but because it was aggrieved by the agency decision, Company is treated as the appellant.

**We reverse the trial court and affirm the Director.**

**Division Two Holds:**

In its first point, Company argues that the Director erred in the Final Administrative Order and Market Conduct Report (Order) because he interpreted the policy term, “actual charge,” unlawfully and incorrectly. The Director acted within the scope of his authority in declaring the policy ambiguous based on Company’s change in claims administration. The Director did not define “actual charges.” Thus, we need not address Company’s contention that this interpretation was incorrect, as the contention inaccurately presumes that the Director made a finding about the definition of “actual charges.” First point is denied.

In its second point, Company argues that the Director failed to acknowledge and give full faith and credit to the final judgment in the class action. The definition of “actual charge” agreed upon between Company and the Missouri policyholders in a

settlement, which is binding between the parties, did not bind the Director's determination of the term's meaning. Second point is denied.

In its third and fourth points, Company argues that the Director erred in issuing the Order because his conclusions were not supported by competent and substantial evidence. Although Company presented witnesses stating that they always intended to define "actual charge" to mean the amount paid to the provider, the evidence supports a finding that the company's past behavior defined "actual charge" to mean something different thereby exposing a latent ambiguity. Because Company's change in administration supports a finding of a latent ambiguity, each of the Director's conclusions of statutory violation is supported by substantial and competent evidence. The third and fourth points are denied.

In the fifth point, Company argues that the Director erred in issuing the Order because he was estopped from asserting violations based on the fact that the Director had "previously affirmed the validity of Company's *actual charge* payment practices." The following elements must be shown: an inconsistency between the government's acts before and after the claim arises of the; a party's active reliance on the government's first act; a resulting injury based on the contradiction of the government's first act by the subsequent act; and the inconsistency constitutes affirmative misconduct. The representations made in the letter do not support estoppel because Company did not actively rely on the Department's representations in changing its administration of "actual charge" benefits. The fifth point is denied.

In the sixth point, Company argues that the Director erred in issuing the Order because Company did not receive a fair hearing under section 536.140.2 because the hearing officer and Director were biased and prejudged the issues. Under Missouri case law, the reasons listed by the Company for bias are insufficient to overcome the strong presumption that the hearing officer was an impartial decision maker. The sixth point is denied.

Therefore, we reverse the trial court's judgment and affirm the Director's Order as to the record supporting its administrative findings and conclusions.

Opinion by: Thomas H. Newton, Judge

November 1, 2011

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